IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Misc. Application No. 304 of 2003

Smt. Brij Sharma ..Applicant

Versus

State of Uttaranchal & Others …Respondents

Criminal Misc. Application No. 315 of 2003

Sunil Kumar & others ..Applicants

Versus

State of Uttaranchal & Others ..Respondents

Criminal Misc Application No. 248 of 2003

Inder Mohan Goshwami & others ..Applicants

Versus

State of Uttaranchal & Others ..Opposite Parties

Sri J.P. Joshi learned counsel for the applicants
Sri J.C. Joshi Senior Counsel appears on behalf of applicants.
Sri L.P. Naithani Senior Counsel assisted by Sri Sudhir Singh learned counsel for the respondents.

Hon'ble B.C. Kandpal,J.

These petitions under Section 482 Cr. P.C. have been filed for quashing the proceedings of the Case Crime No. 26 of 2003 Police Station Raiwala, District Dehradun under Section 420, 467 and 120-B I.P.C. and pending as Criminal Case No. 1728 of 2003 in the court of Special Judicial Magistrate, Rishikesh, District Dehradun who had passed the order dated 06.10.2003 for summoning the accused/applicant before the court by taking the cognizance of the case.

The brief facts of the present case are that one Himmat Rai Ahuja lodged the First Information Report under Section 420 and 467 of I.P.C. against Sri Inder Mohan Goshwami, Sri Shiv Kumar Sharma, Sri Sunil Kumar and Sri Rahul Gautam. The matter was investigated by the police Station Raiwala,

Rishikesh and the police subsequently after the investigation of the case, submitted the chargesheet against Sri Inder Mohan Goshwami, Sri Shiv Kuma Sharma, Sri Sunil Kumar, Sri Rahul Gautam and Smt. Brij Sharma Under Section 420, 467 and 120-B of I.P.C.

After the submission of the chargesheet before the court, Special Judicial Magistrate, Rishikesh took cognizance in the matter on 06.10.2003 and directed that the chargesheet be registered and the accused be summoned.

Feeling aggrieved by the submission of the chargesheet by the police of Police Station Raiwala District Dehradun as well as the order passed by Special Judicial Magistrate on 06.10.2003 summoning the accused/petitioners, the petition under section 482 Cr. P.C. have been filed by Smt. Brij Sharma (Criminal Misc. Application No. 304 of 2003) as well as Sri Inder Mohan Goshwami and Sri Shiv Kumar Sharma (Criminal Misc. Application No. 248 of 2003 and Sri Sunil Kumar, Sri Rahul Gautam and Smt. Brij Sharma (Criminal Misc. Application No. 315 of 2003) under the provision of under Section 482 Cr.P.C.

Heard the learned counsels for the parties and perused the record.

Learned counsel for the applicants/petitioners has firstly argued that no case on the basis of the First Information Report is made out, hence the investigating agency has submitted the chargesheet against the petitioners without application of mind. It has further been submitted that the learned Special Judicial Magistrate also did not apply his mind and ignored this aspect that it is not a case where the cognizance could have been taken.

Learned counsel for the opposite parties has argued that it is as case where the chargesheet has been submitted and now the matter would be decided by the court of competent jurisdiction after the evidence to be adduced by the parties in the trial.

Perusal of the First Information Report shows that the prima facie case against the petitioners has been made out as the same discloses commission of the offence. It is the settled law that the First Information Report need no disclosure of all the facts in detail relating to the offence reported. The true test is that the police officer has reason of suspect commission of offence for which he is empowered to investigate and informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the offence took place. The first informant need not necessarily be an eyewitness so as to able to disclose in great details all aspects of the offence committed. What is of significance is that the information given must disclose the commission of the offence and the information so lodged must provide a basis of a cognizable offence. Therefore, this argument advanced by the learned counsel for the petitioners that the F.I.R. does not make out the case against the petitioners is of no avail.

In the instant case, the investigation officer has submitted the chargesheet against the petitioners and after the submission of the chargesheet the learned Special Judicial Magistrate, after application of his mind took the cognizance and directed that the chargesheet be registered and thereafter summoned the accused persons. Therefore, this court under the provisions of 482 Cr.P.C. is not justified in embarking upon an inquiry as to the reliability or genuineness of the allegations

made in F.I.R. of the complainant, on the basis of the evidence collected during the investigation. It is the settled law propounded by the Hon'ble Apex Court in the several cases that the power for quashing the F.I.R. and the criminal proceedings while exercising a jurisdiction under Section 482 Cr.P.C. should be sparingly used and those powers to be used only when there is an abuse of process.

The record shows that the allegations made in the F.I.R. constituted and offence as alleged by the complainant, which is triable by the competent court of jurisdiction. The question, whether the offence is committed or not and if committed, under what circumstances and with what intention are to be examined by the court on the basis of the evidence in trial. Therefore, I am of the view that the trial must go on and quashing the F.I.R. as well as the chargesheet submitted before the magistrate, would not be proper. Further the trial court shall deal with the case uninfluenced by any of the observation made by this court.

For the reasons set out above it is any considered view that present petition being devoid of any merit is liable to be dismissed.

Accordingly the petition under Section 482 Cr.P.C. is dismissed. The interim order dated 05.12.2003 passed by this court is vacated.

The copy of the order shall be placed in the file of Criminal Misc. Application No. 315 of 2003 as well as in Criminal Misc. Application No. 248 of 2003.

(**B.C. Kandpal,J.)**

July 16th 2004
ASWAL